

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

DONALD KIRK,

Plaintiff,

v.

**COMMISSIONER, SOCIAL
SECURITY ADMINISTRATION,**

Defendant.

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Case No. 6:20-cv-00382-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff Donald Kirk filed this case seeking judicial review of the Commissioner's final decision denying his application for Supplemental Security Income. After receiving a favorable decision from the Commissioner on remand, Plaintiff filed a motion seeking to recover attorney's fees. Docket No. 32. The motion was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636 and Federal Rule of Civil Procedure 54(d)(2)(D).


On October 24, 2023, Judge Mitchell issued a Report and Recommendation recommending that the Court grant the motion and award Movant the sum of \$10,699.75 to be paid out of Plaintiff Donald Kirk's past-due benefits for representation before the Court in this matter. The Report additionally recommends that Movant remit the previously awarded EAJA fees in the amount of \$5,864.90 to Plaintiff upon receipt of the § 206(b) fees. No objections have been filed.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, no party objected in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, The Court hereby **ADOPTS** the Report and Recommendation of the Magistrate Judge (Docket No. 35) as the opinion of the Court. The motion for attorney's fees (Docket No. 32) is **GRANTED**. For his representation before the Court in this matter, Movant Zachary Mitzner is awarded the sum of \$10,699.75, to be paid out of Plaintiff Donald Kirk's past-due benefits. Upon receipt of the \$10,699.75, Movant shall remit to Plaintiff the previously awarded EAJA fees in the amount of \$5,864.90.

So **ORDERED** and **SIGNED** this **9th** day of **November, 2023**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE